IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12442 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RANJANBHAI CHIMANLAL SHAH

Versus

G E B

Appearance:

MR DS VASAVADA for Petitioner

MR SP HASURKAR for Respondent No. 1-2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 19/04/2002

ORAL JUDGEMENT

Heard the learned advocate Mr. D.S.Vasavda on behalf of the petitioner and learned advocate Mr. S.P. Hasulkar on behalf of the respondent-Board. In the present petition, the petitioner has challenged the order of punishment dated 26th September, 2000, wherein ensuing one increment of the petitioner was withheld without

cumulative effect by the Member (Technical) of the Board. Against the said order, a departmental appeal was filed by the petitioner which came to be rejected by the Secretary vide order dated 16th March, 2001 and thereafter second appeal was filed by the petitioner before the Chairman of the respondent-Board which also came to be rejected on 7th August, 2001.

2. Learned advocate Mr. Vasavda has submitted that both the appellate authorities rejected the appeals filed by the petitioner without assigning reasons. Both the orders of appellate authorities are non-speaking orders. Therefore, on that ground the appeals are rejected by both the authorities are not made clear in both the orders and, therefore, the orders passed by the appellate authorities are required to be quashed and set aside.

3. Learned advocate Mr. H.P.Hasulkar on behalf of the respondent supported the orders of the appellate authority and pointed out that there is no need to give any reason while rejecting the appeals of the petitioner. The appellate authority has considered the appeal filed by the petitioner and after considering such appeal it has been decided to reject the same and, therefore, both the appellate authorities have applied their mind and passed the said orders.

4. I have considered the submissions made by both the learned advocates. I have also perused the orders passed by the first appellate authority dated 16th March, 2001,Annexure "H", page 46 and second appellate authority dated 7th August, 2001, Annexure I, page 48. According to my opinion, once the petitioner has approached the appellate authority and challenged the punishment order on various grounds, then it is the duty of the appellate authority to pass a reasoned and speaking order so that it can be visualized that whether the appellate authority has applied its mind in respect of passing the orders and the contention which has been raised by the petitioner in appeal has been taken into account by the appellate authority while considering the appeal of the petitioner. In absence of the reasons in the impugned orders, these things remained as it is and, therefore, such orders not giving any reasons while rejecting the appeal amounts to non-application of mind on part of the appellate authority. Therefore, both the orders passed by the appellate authorities dated 16th March, 2001 and 7th August, 2001 are required to be quashed and set aside. This order has been passed by this Court and matter has been considered by this Court only on the limited aspect that the orders of the appellate authorities are without

assigning reasons which amounts to non-application of mind. Other contentions on merits have not been considered by this Court and those contentions shall remain open for the petitioner to raise before the appellate authority.

5. In the result, the present petition is allowed. The orders passed by the appellate authorities dated 16th March, 2001 and 7th August, 2001 are hereby quashed and set aside with a direction to the first appellate authority to decide the appeal filed by the petitioner against the punishment order dated 26th September, 2000 and pass a reasoned and speaking order after giving reasonable opportunity to the petitioner, within a period of three months from the date of receiving copy of this order. Accordingly rule is made absolute. No orders as to costs.

(H.K.Rathod, J.)

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